(1963) 07 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 154 of 1961

Green Hotel and Restaurant, Registered — APPELLANT

Vs

The Assessing Authority and Others — RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 3, 7
Punjab General Sales Tax Act, 1948 — Section 16, 23(1), 6, 6(1), 6(2)

Citation : (1964) 1 ILR (P&H) 391

Hon'ble Judges : S.S. Dulat, Acting C.J.;A.N. Grover, J

Bench : Division Bench

Advocate : D.S. Nehra, for the Appellant; N.L. Salooja, for the Respondent

Judgement

A.N. Grover, J.—This is an appeal under Clause 10 of the Letters Patent against the judgment of learned Single Judge dismissing a petition under Article 226 of the Constitution by which certain assessment orders relating to levy of sales tax on the Petitioner were sought to be quashed.

2. The Petitioner firm has its head office at Patiala and its branches at Ludhiana and Jullundur. Its branches consists, among others of catering and providing food and lodging to the customers. It was registered under the Pepsu Sales Tax Ordinance, 2006, Bk, and it continues to be so registered under the Punjab General Sales Tax Act, No. 46 of 1948 (hereinafter called the Act). In paragraph 3 of the petition it is alleged that the Petitioner firm serves Indian dishes and food preparations to its customers, e.g., vegetables, meat preparations, curd and curd preparation, etc., which are ordinarily prepared and served by Tandoor-walas, Lohwalas and Dhabwalas. They also serve tea and sweets, etc., as are prepared by the Halwais. In February, 1957, the Punjab General Sales Tax (Extension) Ordiance, 1957, was promulgated whereby the Act, as it then stood, was extended to the territories comprising the erstwhile State of Pepsu. Section 6(1) provided that no tax shall be payable on the sale of goods specified in the

first column of the Schedule. Prior to 10th July, 1954 entries Nos. 49 and 50 of the Schedule were as follows:

Column 1. Column 2.

"49. Indian food. preparations or dinarily prepared by Tandoor-. walas, Lohwalas, and Dhabas. 50. Articles ordinarily prepared by Halwais when sold by them."

3. By a notification dated 10th July, 1954 issued by the Governor of the Punjab in exercise of powers conferred by Section 6(2) of the Act and published in the Gazette dated 23rd July, 1954 these items were substituted by the following entries.

Column 1. Column 2.

"49. Indian food preparations or dinarily prepared by Tandoor-. walas, Lohwalas, and Dhabas. When sold by persons running Tandoors, Lohs and Dhabas exclusive- iy.

50. Articles ordinarily prepared by Halwais. When sold by Halwais exclusively."

4. Respondent No. 1, who is the assessing authority under the Act, assessed the Petitioner firm in respect of the year 1957-58. A liability in the sum of Rs. 5,277.06 nP. was created. Proceedings for prosecution of the Petitioner u/s 23(1)(b) of the Act for alleged default in filing the quarterly returns relating to the year 1957-58 were also started and ultimately a fine of Rs. 100 was imposed by the Magistrate 1st Class, Patiala, on 10th May, 1960 for this offence.

5. In the petition itself, the point which was prominently raised was that the power given u/s 6(2) of the Act to the Governor to alter and amend the items or entries in Schedule was illegal and ultra vires as it suffered from the vice of excessive delegation and was also hit by Article 14 of the Constitution. In the judgment of the learned Single Judge there is no discussion on this point but it has been seated at the bar as also in the grounds of appeal that the matter was fully argued before him. The learned Judge dismissed the petition primarily on the ground that it was premature and misconceived. According to him in order to avail of the benefit of the exemption in respect of items 49 and 50 of the Schedule it was incumbent on the Petitioner firm to prove the following facts:

1. That the food preparations sold are those which are ordinarily prepared by Tandoor-walas, Lohwalas and Dhabas,

2. that its own position while making sale of these preparations is that of persons running Tandoors, Lohas, and Dhobas exclusively,

3. that the sweets prepared and sold are ordinarily those which are prepared by Halwais, and

4. that its own position while making sale of the said sweets is that of the Halwais.

6. These matters could be proved only by production of evidence because they were pure questions of fact and had been denied by the Respondents. The Petitioner firm in these circumstances should seek its ordinary remedies before the assessing authorities and then bring the case to this Court on reference if a reference could be justifiably made. In this view of the matter the petition was dismissed.

7. Mr. D.S. Nehra, learned Counsel for the Appellant firm, contends that there is no bar to this Court granting relief in a petition under Article 226 if it were to be found that the levy of the sales tax was wholly ultra vires and illegal. In Messrs Trikha Ram Chandu Lal v. The State of Punjab (Civil Writ No. 1488 of 1960) decided by me sitting singly on 23rd February,. 1961, an objection had been raised that the Petitioner should exhaust all the remedies which were provided by the Act before approaching this Court under Article 226. It has been observed that it is well settled by now that when taxes are illegally levied it is an infringement of fundamental rights and that laches and delay are wholly immaterial if the petition raised an objection of violation of such a right. I proceeded to say-

After the decision of their Lordships of the Supreme Court in Kailash Nath and Another Vs. State of U.P. and Others, , and Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, the Bench was, with respect, justified in observing in Punjab Woollen Textile Mills, Chheharta v. The Assessing Authority, Sales Tax, Amritsar 1960 P.L.R. 322, that there is no hard and fast rule that this Court must refuse to entertain a petition under Article 226 of the Constitution merely because there is an alternative remedy prescribed.

It would certainly be a relevant factor to be taken into account. As there is no dispute on facts in the present case and the point that has been raised on the merits is almost covered by a previous judgment given by Mehar Singh, J. in Civil Writ No. 778 of 1960, decided on the 12th January, 1961, I do not see any reason or justification for declining to interfere only on the ground that alternative remedies were available and had not been completely exhausted.

8. Mr. Nehra contended that this point stands concluded by the judgment of the Full Bench in Messrs Rameshwar Lal-Sarup Chand v. Shri U.S. Naurath and, Anr. ILR (1963) 2 P&H 370, but on a careful persual of the same I do not find that this question was specifically raised or decided in that case. As has been observed in my previous judgment, no hard and fast rule can be laid down in such cases and it would depend on the facts and circumstances of each case whether the Court would be inclined to interfere under Article 226 of the Constitution.

9. Mr. Nehra''s main contention is that Section 6(2) of the Act, which empowers the State Government to add to or delete from Schedule ''B'' by means of a notification should be struck down on the ground that there is delegation of legislative powers beyond the permissible limits. In Hamdard Dawakhana and

Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, the validity of Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, was impugned. Section 3 of that Act is as follows:

3. Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for:

(a) the procurement of miscarriage in women or prevention of conception in women; or

(b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or

(c) the correction of menstrual disorder in women; or....

(d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act.

10. According to their Lordships, the words "or any other disease or condition which may be specified in rules made under this Act" in Section 3(d) were vague and they conferred uncanalised and uncontrolled power on the executive. The interdiction under that Act was applicable to conditions and diseases set out in the various clauses of Section 3 and to those that may under the last part of Clause (d) be specified in the rules made u/s 16. The first Sub-section of Section 16 authorised the making of rules to carry out the purposes of that Act and Clause (a) of Sub-section (2) of that section specifically authorised the specification of diseases and conditions to which the provisions of Section 3 were to apply. The first Sub-section of Section 16 conferred the general rulemaking power i.e., it delegated to the administrative authority the power to frame rules and regulations to preserve the purpose of the Act. The following passage at page 568 contains the ratio of the decision:

Consequently when the rule-making authority specifies conditions and diseases in the schedule it exercises the same delegated authority as it does when it exercises powers under Sub-section (1) and makes other rules and therefore, it is delegated legislatioon. The question for decision then is, is the delegation constitutional in that the administrative authority has been supplied with proper guidance. In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in Section 3(d) must therefore be held to be going beyond permissible boundaries of valid delegation. As a consequence the Schedule in the rules must be struck down. But that would not affect such conditions and diseases which properly fall within the four clauses of Section 3 excluding the portion of Clause (d) which has been declared to be unconstitutional.

11. Section 7 of the Drugs and Magic Remedies (Objectionable Advertisements) Act lays clown the penalty for contravention of the provisions of the Act which is that in the case of a first contravention the punishment will be imprisonment for a period of 6 months or with fine or with both and in the case of a subsequent conviction, imprisonment which may extend to one year or with fine or with both.

12. Mr. Nehra has relied a great deal on the above decision of the Supreme Court in support of his argument that Section 6(2) of the Act should be struck down on the ground of delegation of legislative power to the. State Government beyond the permissible limits. Section 6 is quite different from the section which was under consideration of their Lordships in the aforesaid case. It provides for exemption from, levy of tax in respect of sale of goods specified in the first column of Schedule ''B''. The State Government has been given the power to add to or delete from Schedule ''B'' after giving, by notification, not less than three months of its intention so to do. In the schedule itself, as has been stated before, exemption had been granted under items 49 and 50 to certain food preparations ordinarily sold by Tandoorwalas, Lohwalas and Dhabawalas and to articles ordinarily prepared by Halwais when sold by them. The presence of these entries in the Schedule itself indicated the policy and the criteria on which exemptions were to be made from payment of sales tax. If the amendments which were made were consistent with that policy and criteria, then it is not possible to strike them down on the reasoning in the Hamdard Dwakhana''s case. What was sought to be done by the amendment was that additions were made under column 2 which confined the exemption with regard to item No. 49 to sales by persons running Tan-doors, Lohs and Dhabas exclusively and with regard to item No. 50 to sales by Halwais exclusively and this would not militate against the policy of exempting certain kinds of food preparations ordinarily sold by Tandoorwalas, etc., and articles ordinarily prepared by the Halwais. The facts of the present case are therefore, quite distinguishable from the Hamdard Dwakhana''s case and it is not possible to hold that the notification by which the amendments were made in 1954 are ultra vires and void by virtue of the inhibition against delegated legislation, nor can it be said that uncanalised and arbitrary power has been conferred on the executive by Section 6(2). It must not be forgotten that the Act does provide for taxing all the sales of goods except those included in Schedule ''B''. The authority delegated by the Legislature u/s 6(2) is not to tax the goods but rather to exempt them from the levy of the tax. It cannot, therefore, be possibly said that there has been either delegation of taxing power to the State Government or that it has been empowered to levy tax by exercising discrimination. The power to exempt from the levy of tax can by no means be equated with the power to specify new diseases and conditions pursuant to Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisements) Act which would involve the creation of new offences for which

penal punishment was provided as was the situation in the Hamdard Dwakhana''s case. This part of Mr. Nehra''s argument is consequently repelled.

13. It has next been contended that there will be hardly any objective test for determining whether a particular concern catering and selling Indian Food preparations and articles ordinarily prepared by the Halwais is a Tandoor, Loh or Dhaba exclusively or is a high class restaurant or hotel which would not fall within the category of Tandoors, etc. According to column 2, the exemption is granted to persons running Tandoors, Lohs and Dhabas exclusively and to articles ordinarily prepared by Halwais when sold by them exclusively. The meaning and connotation of the words "Tandoor", "Loh" ami "Dhaba" as also Halwai are well known in this part of the country and it can always be determined whether a particular person is running a Tandoor, Loh or Dhaba or he is a Halwai. Moreover, the clear meaning of the language employed in column 2 of the amended entries is that the exemption can be claimed only by those persons who do not do any other business but only run -Tandoors, Lohs and Dhabas and when the articles ordinarily prepared by Halwais are sold by Halwais and not by others. Mehar Singh, J., In Shiv Ram v. The excise and Taxation Commissioner (Civil Writ No. 778 of 1960) decided on 12th January, 1961, which decision was followed by me in Civil Writ No. 1488 of 1960, adverted to the meaning of the word "exclusively" in item No. 50 thus:

I think the word ''exclusively'' irk item No. 50 obviously goes with the word ''Halwais'' and what the item means is that when the articles ordinarily prepared by Halwais or sold by Halwais they are exempt from sales tax, but when such articles are sold by persons other than Halwais they are not exempt from the same. So a Halwai can sell articles ordinarily prepared by Halwais and he can also sell any other articles. He will be exempt from sales tax in regard to articles ordinarily prepared by Halwais under item No. 50 and he will be liable to sales tax in regard to the other articles sold unless he can claim exemption with regard to any of them under any other item * * *.

14. This view of the meaning and ambit of the word "exclusively" is unexceptionable and Mr. Nehra has not been able to show any infirmity in it. In the present case the learned Single Judge was fully justified in saying that a number of facts had to be proved by the Petitioner before it could claim exemption under items 49 and 50. That could be done only by placing the relevant facts and producing evidence in support thereof before the assessing authorities because it is not for this Court to give any decision with regard to them or to enter into detailed enquiry with regard to the correctness or otherwise of the rival allegations of the parties.

